

Ravalli County Planning Board
Meeting Minutes for September 20, 2006
3:00 p.m.
Commissioners Meeting Room, 215 S. 4th Street, Hamilton, Montana

Public Hearing

Sapphire Meadows (Kirschten) Major Subdivision and Two Variance Requests
McMillan Ranch Lot 1A, AP (Wilkins) Minor Subdivision

Plat Evaluation

Summerdale Orchards, Block 1, Lot 5A, AP (Bitterroot Ranch, LLC) Major Subdivision

This is a summary of the meeting, not a verbatim transcript. A CD of the meeting may be purchased from the Planning Department for \$5.00.

1. Call to order

Chip called the meeting to order at 3:04 p.m.

2. Roll Call (See Attachment A, Roll Call Sheet)

(A) Members

Mary Lee Bailey (present)
Dale Brown (present)
Ben Hillicoss (present)
Dan Huls (present)
JR Iman (present)
Maura Murray (present)
Chip Pigman (present)
Les Rutledge (present)
Lori Schallenberger (present)
Gary Zebrowski (absent – excused)

Park Board Representative: Bob Cron (present)

(B) Staff

Jennifer De Groot
John Lavey
Tristan Riddell
Renee Van Hoven

3. Approval of Minutes

Chip asked if there were any corrections or additions to the minutes from September 6, 2006. There were none. The minutes were approved.

4. Amendments to the Agenda

There were none.

5. Correspondence

John noted that Staff received three additional comments after Staff Reports were mailed. They included an agency comment from Corvallis School District on McMillan Ranch, Lot 1A, AP (See Attachment B, Letter from Daniel Sybrant); an agency comment from the Stevensville Rural Fire District regarding Sapphire Meadows (See Attachment C, Letter from Bill Perrin); and a public comment on Sapphire Meadows (See Attachment D, Letter from William and Nancy Roschi).

6. Disclosure of Possible/Perceived Conflicts

There were none.

7. Public Hearing

(A) Sapphire Meadows (Kirschten) Major Subdivision and Two Variance Requests

- (i) Staff Report on the Subdivision Proposal: **Tristan Riddell** gave a PowerPoint presentation. He gave an overview of the proposal and stated Staff recommended approval of both variances and the subdivision subject to 11 conditions in the Staff Report. He entered the Staff Report into the record. (See Attachment E, Sapphire Meadows Staff Report and Attachment F, Amendment to the Sapphire Meadows Staff Report)
- (ii) Three Minute Rule Waiver Requests

There were none.

- (iii) Public Comment on the Subdivision Proposal and Variance Requests

(a) Persons in Favor

Gordon Sorenson said that the applicant had lived on the 30 acres for 30 years and recently built a new home nearby. He said that variances were requested because the farmstead is oriented to the driveway, which has been in existence since 1976. He noted that the second variance was proposed so that Lot 1 could access off the same driveway. He suggested that the developer and school superintendent negotiate a school donation instead of having the Board set one. He noted that the applicant elected to donate \$500 per lot to the Fire District. He said that Condition 7 should be changed so that stop signs are installed with the road construction, not prior to it. He said he agrees with the rest of the conditions, but does not like pro-rata.

(b) Persons Opposed

Craig Thomas said he lives on Ember Lane north of the proposed subdivision and asked how much new traffic would be generated on his lane. He said that the Homeowner's Association for the Illinois Bench area restricted one house to five acres, but this proposal was for one house per two acres. He noted that he had issues with his septic system and drainfield. He said that he had a private airstrip north of the subdivision and the Stevensville Airport was to the south.

He noted there was no mention of airports in the Staff Report and did not want neighbors to complain they had not been notified of them.

(c) Rebuttal

Gordon said that there is a non-ingress/egress zone along the east of the subdivision so no new traffic will use Ember Lane. He noted that the subdivision site passed groundwater monitoring last spring and the sites were dry. He also did degradation modeling and there was no indication of degradation of state water or groundwater. He said he had not heard of the private airstrip until tonight, but the subdivision is not within the zone of influence for the Stevensville Airport.

(d) Close: Public Comment

(iv) Board Deliberation on Variance Request 1 (Lot Access)

(a) Board Discussion and Questions

Ben asked if there were any covenants or deed restrictions limiting the subdivision to one lot per five acres.

Gordon explained that the Kirschtens' property is in a different Homeowner's Association and the proposed covenants preclude further subdivision of the created lots.

Les asked for clarification of the western access. He noted that in a letter from Gordon on June 16, the engineer said that the road has to be gravel with approval of a neighbor, or hard-surfaced. He noted that in a letter dated April 20 from WGM Group, they said that if the existing driveway is considered a road, it would need to be paved.

Gordon said that the letters refer to the existing gravel driveway, which should not have to be paved since it is not considered a "road."

Renee noted that the applicant is requesting a variance from the flag lot requirement.

Tristan explained that 20 feet from the right-of-way will need to be paved.

JR asked if there was an Airport Influence Area for the Stevensville Airport and noted that the new owners could be notified of their proximity to the airport.

Gordon noted there was one, but this subdivision was outside that area.

Renee said that the Board could add a finding to the Staff Report under effects on public health and safety. She noted that if a subdivision is inside the area, Staff would recommend conditions.

Lori said that the Board could add testimony that there is a private airport in close proximity.

Bob asked how far the private airport was from the subdivision.

Craig Thomas said it is about 1,400 feet north of the subdivision and is parallel to the Stevensville airstrip.

Les asked if Ember Lane is a private road and if any of the lots in this subdivision will access off the lane.

Gordon noted there is a non-ingress/egress zone along the eastern border of the subdivision and no traffic will be generated on Ember Lane.

Les motioned to approve the subdivision based on the findings of fact and conclusions of law in the Staff Report and subject to the conditions in the Staff Report.

Lori seconded the motion.

(b) Board Action

The vote was called; the members voted (9-0) to approve the Variance. (See Attachment G, Sapphire Meadows Variance 1 Vote Sheet)

(v) Board Deliberation on Variance Request 2 (Flag Lot)

(a) Board Discussion and Questions

Les motioned approval of the variance based on the findings of fact and conclusions of law in the Staff Report and Amendment to the Staff Report and subject to the conditions therein.

Maura seconded the motion.

(b) Board Action

The vote was called; the members voted (9-0) to approve the Variance. (See Attachment H, Sapphire Meadows Variance 2 Vote Sheet)

(vi) Board Deliberation on the Subdivision Proposal

(a) Board Discussion and Questions

Ben asked if the developer had already negotiated a school donation with the School District.

Gordon said he had not, but in another situation, the superintendent negotiated for new computers.

Chip said that in the past, the Board has required a letter from the School Superintendent stating that they were satisfied with the donation.

Ben said he thought it was a good idea.

Les asked Gordon if he recalled a letter regarding paving the existing driveway.

Gordon explained that the first 20 feet of the western access will be paved, but beyond that, it is a driveway and not required to be paved.

Les motioned approval of the subdivision based on the findings of fact and conclusions of law in the Staff Report and subject to the conditions in the Staff Report with a provision for the applicant and school superintendent to meet and agree on a reasonable school donation.

Lori suggested amending the motion so that Condition 7 would be met when the road is constructed, rather than prior to final plat approval.

Tristan explained that the road is required to be paved prior to final plat unless the applicant goes into a subdivision improvements agreement. He noted that if there is a subdivision improvements agreement, stop signs can be added to it.

Mary Lee seconded the motion.

Les amended the motion to include notification about the existence of the private airstrip.

(b) Board Action

The vote was called; the members voted (9-0) to approve the Subdivision. (See Attachment I, Sapphire Meadows Subdivision Vote Sheet)

(B) McMillan Ranch, Lot 1A, AP (Wilkins) Minor Subdivision

(i) Staff Report on the Subdivision Proposal: **John Lavey** gave a PowerPoint presentation. He gave an overview of the proposal and stated Staff recommended approval of the subdivision subject to 11 conditions in the Staff Report. He entered the Staff Report into the record. (See Attachment J, McMillan Ranch Lot 1A, AP Staff Report)

(ii) Three Minute Rule Waiver Requests

Hans Upchurch requested five minutes to speak regarding irrigation. The Board approved the request. (See Attachment K, Hans Upchurch Three-Minute Rule Waiver Request)

(iii) Public Comment on the Subdivision Proposal

(a) Persons in Favor

Leonard Shepherd said he agrees with the Staff Report with one change. The applicant was going to distribute water, but now he would like to amend the plan so that Lot 1A5 will receive all the water rights and the four smaller lots will not have any, to preserve the status quo.

(b) Persons Opposed

Don Felton said he lives off Orchard Drive by the north corner of the subdivision. He said the developer cannot divide water rights because they go with the land. He said that eventually, there will be a subwater right for well water.

Hans Upchurch said he lives off Orchard Drive and is concerned about the wildlife that visit the property and come to Blodgett Creek. He said there is a traffic safety issue with Orchard Drive and people sometimes end up in his pond. He noted that because there are no signs or warnings, people do not realize that the road turns and instead continue straight. He said that the proposed Wal-Mart location is close and Orchard Drive traffic will increase. He asked for covenants to protect the property values in the area. He said that the irrigation situation is a mess already and adding more people would make the situation worse.

Clara Felton said that the aquifer is so low in the area that people have to drill deeper for water and the water has high iron levels. She said that traffic on Orchard Drive is very busy and adding more traffic will make it bumper-to-bumper.

Jenny Upchurch said it is unfortunate that people want to divide a pristine lot. She said that she and her neighbors will have to look at the new homes. She said she did not think someone should be able to move in and subdivide the land.

(c) Rebuttal

Leonard said that the principal development is off Orchard Drive and the rest is left as it is. He said that the Road Department issued approach permits. He noted that land closer to town, such as this proposal, is more likely to be divided.

(d) Close: Public Comment

(iv) Board Deliberation on the Subdivision Proposal

(a) Board Discussion and Questions

Lori recused herself and abstained from voting on the subdivision.

Chip noted that it seemed odd that the footprint of the house could not be expanded and asked how the condition would be enforced.

John said that it could be enforced by the County Commissioners at some time in the future.

Chip said that a 100-foot setback from the top of the bank seems excessive and asked if the Planning Department or a consultant made that recommendation.

John responded that the County's Floodplain Administrator recommended that restriction.

JR noted that the setback would only apply to the house already constructed on the parcel and commented that it was built in the wrong place. He asked if the setback is by an irrigation ditch.

John said that only the northernmost section of the restricted area contains part of the ditch.

Leonard said that Laura Hendrix could not give any empirical reason for requiring the 100-foot setback. He noted that John Horat suggested a 25-foot setback.

Chip said he thought the setback was excessive.

JR said he was in favor of a statement on the face of the plat that water rights have been removed from Lots 1A1-1A4. He noted that originally, the property was flood-irrigated. He explained that to remove water rights, the applicant has to go through a court proceeding and give the water to the State or physically move the water assigned to those acres to the larger lot. He asked if there was any further division proposed on Lot 1A5.

Leonard said there was not at this time. He noted that if there is a proposal, it would come before the Board as a subsequent minor subdivision, but that the applicant could restrict further subdivision of that lot.

Les asked if there had been a question about the status of Orchard Drive or Bowman Road. He noted that if they are county roads, that would affect public health and safety and trigger pro-rata.

Renee said that she did not know there was a question about these specific roads, but noted that there have been discussions about the status of many so-called "county roads" and if they were properly adopted.

John said that David Ohnstad implied in emails that the roads are county roads and therefore, pro-rata would apply.

JR noted that the county rebuilt the road less than two years ago and left in the 90-degree turns.

Don Felton said that he fought with the County for 18 years about the road and they finally paved it. He noted that anytime there is an accident on Highway 93 between the Silver Bridge and Woodside, all the traffic comes up Orchard Drive. He said that one time he counted 150 cars in one hour. He said that when highway construction begins, more traffic will use the road.

Les suggested that the Board make a comment about unsafe road conditions.

Chip said that some of the situation is handled by the speed limit, but noted that it is not enforced.

Hans Upchurch noted that bike traffic on the road has increased and said that he does not want to see anyone hurt. He noted that in the last four years, four people have ended up driving into his pond.

Ben asked if there were any covenants proposed.

Ron Wilkins said the covenants do not allow pre-built houses or mobile homes. He said he does not want to downgrade the neighborhood and wants consistency with what is already present.

Vern Eckstein said she was concerned that homes will be built that will degrade her retirement property.

Chip motioned approval of the subdivision subject to the conditions in the Staff Report.

JR seconded the motion. He suggested adding a condition that the developer remove the water rights from Lots 1A1-1A4 before final plat and notification of this action on the final plat. He explained that an owner can go through a court proceeding to remove water rights. He explained that the remaining water rights could be transferred back to the state or to Lot 1A5.

Hans Upchurch commented that he believed wildlife is a huge issue.

Chip noted that Staff has already reviewed that issue and the Board cannot require more covenants than Living with Wildlife suggested by MFW&P.

Les asked what the Board wants to do about the safety issue on Orchard Drive and Bowman Road.

Chip said the Board could make a recommendation that the people who live in the area do not feel it is a safe road.

JR noted that when the Road Department constructed the road, the previous owners would not give up a radius of their land so that the road would curve instead of sharply turn as it does today. He noted that the County gave the road a permanent finish and that the current landowners are not at fault.

Dale recommended that the County put up an aesthetic barricade and signage.

Dan suggested sending a separate recommendation to the County Commissioners regarding Orchard Drive.

(b) Board Action

The vote was called; the members voted (8-0) to approve the Subdivision, with one member abstaining. (See Attachment L, McMillan Ranch Lot 1A, AP Vote Sheet)

8. **Close Public Hearing**

9. **Discussion on Water Rights and Bowman Road**

Ben asked for a discussion on water rights and asked if they run with the land.

JR explained that water rights do apply to the land unless legally removed. He noted that on the west side of the valley, there are usually easements from the property to the source of water, which is shown on plats. He noted that these landowners do not have to pay for water, but have to maintain the conveyance of water to the property. He commented that on the east side of the valley, there is a canal system owned by a company and landowners have to pay fees associated with the ditch company. He noted that ownership in the ditch company can be sold and that water goes back to the ditch company for redistribution. He said that people can physically remove water rights from any property if they own it and the water can go back in the stream or be transferred to another property.

Hans Upchurch said that the ponds in the Orchard Drive area were put right in the creek and that should not have been allowed.

Dorothy Roark said that she had 100 inches in 1954, but sold the rights to someone else. She said that her father said that water runs with the land and should not be taken from it.

Ron Wilkins said that he is already not using his water rights. He said he will probably sink a well to irrigate the property if needed. He said that right now the water is running down a ditch and probably going to the river. He said that he does not want to draw water out of Blodgett Creek.

Les said that the Board should recommend that a situation exists in terms of safety as expressed by the community present regarding right-angle turns on Orchard Drive and inadequate signage. He suggested that the Board send a recommendation to the County Commissioners for the Road and Bridge Department to alleviate that situation.

Dan suggested drafting a memo and forwarding it to the County Commissioners.

Les motioned to send a memo to the County Commissioners regarding safety on Orchard Drive.

Dale seconded the motion.

The Board unanimously approved the motion.

10. **Plat Evaluation**

(A) Summerdale Orchards, Block 1, Lot 5A, AP (Bitterroot Ranch, LLC) Major Subdivision

(i) Presentation by John Kellogg, Professional Consultants, Inc.

John Kellogg noted that the proposal is for eight lots on 15.54 acres off Summerdale Road. He explained that seven lots were approved previously to the northwest of the proposed subdivision, but at that time, the owners did not own the parcel in question. He noted that they were initially going to propose a more dense subdivision, but decided against it when they realized that well water availability was an issue. He said at first well production was spotty, but then they dug wells and DEQ has determined there is adequate water for the development. He noted that the developer is proposing to pave an internal road and might change its name to Gilchrist Drive. He noted that there is a pipeline on the south side of the property, and the developer has approval from the ditch company. He noted that DEQ and

BRID want all lots irrigated from the pipeline. (See Attachment M, Letter from DEQ dated September 11, 2006)

(ii) Public Comment

Kay MacArthur said that her maiden name was Holloran and she lives on the land her grandmother homesteaded in 1908. She said that the subdivision has adverse effects on all of the subdivision criteria. She asked the Board to look at the previous subdivision approved to the northwest and noted that some lots have not been completed. She noted that some yards have not been finished yet because of a lack of water.

(iii) Board Discussion and Questions

Les pointed out that there were inconsistencies in the wells shown. He asked the developer to check his well numbers before final plat.

John Kellogg explained that some of the wells were never drilled and were proposed well sites. He pointed out where each well location would be.

JR asked how Lots 7 and 8 will receive water.

John Kellogg responded that there is an easement and pipeline on the eastern side of the subdivision to service those lots.

JR noted that the water line is pressurized.

Kay MacArthur said that there were eight people on gravity flow, but there are 58 now. She said that the head structure is on Appleview Lane.

Dan said that would be adequate pressure.

JR said he was concerned that the new systems have a shut-off. He suggested that the developer install and use a flowmeter so the people do not exceed their water rights.

11. Communications from Staff

There were none.

12. Communications from Public

There were none.

13. Communications from the Board

Chip suggested that the Board formally request an opinion from the County Attorney's Office on how the interim zoning initiative would affect current subdivision proposals if it was passed. He asked if anything without preliminary plat approval would be stopped and if the Board would focus on zoning instead. He motioned for the opinion.

Les seconded the motion.

The Board unanimously approved the motion.

JR said that Tom Ruffatto will serve on the Board this winter as the representative from the Bitterroot Conservation District.

Mary Lee asked if only comments on new information will be able to be presented to the Board at the upcoming Aspen Springs hearing.

Renee said the Board needs to work with James. She noted that the subdivision cannot go before the Board again after the next hearing.

JR recommended that all other comments be addressed in the agenda item called "Communications from Public," noting that all comments deserve to be heard, but some might not apply to the subdivision.

Dan said that John Horwich said that he can limit public comment to new information, but once someone is recognized, he or she has the floor.

Renee suggested that the Board hear James' comments on John Horwich's opinion.

Chip asked if projects submitted in a zoned area have a different review process.

Renee said it depends if the zoning meets specific criteria. She noted that most voluntary zoning districts only address a few items, and in those cases, subdivisions in those areas are reviewed. She said if zoning contains the criteria, it could streamline the subdivision review process.

Chip asked if the interim zoning initiative for one dwelling per two acres would meet specific criteria and allow for streamlined review.

Renee said she was not sure.

Ben noted he was going to try to schedule a Land Use Subcommittee meeting for next Tuesday.

14. New Business

There was none.

15. Old Business

There was none.

16. Special Meeting: September 27, 2006 at 7:00 p.m. First Interstate Event Center, Ravalli County Fairgrounds

(A) Aspen Springs (Wesmont) Major Subdivision and Eight Variance Requests – Public Hearing on New Information

17. Next Regularly Scheduled Meeting: October 4, 2006 at 7:00 p.m.

- (A) Summerdale Orchards, Block 1, Lot 5A, AP (Bitterroot Ranch, LLC) Major Subdivision – Public Hearing

18. Adjournment

Dan adjourned the meeting at 4:57 p.m.